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WILLIAM R STARK JR
26602 ARACENA DR
MISSION VIEJO CA 92961

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JAN 19 2006

OFFICE OF PETITIONS

In re Application of	:	
William Reynolds Stark	:	
Application No. 10/737,329	:	ON PETITION
Filed: December 17, 2003	:	
Title: Root Zone Injection Surface	:	
Irrigation System	:	

This is a decision on the paper filed October 20, 2005 ("dated" September 4, 2005), which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is DISMISSED.

The above-identified application became abandoned for failure to timely file a response to the Office action mailed January 26, 2005, which set a shortened statutory period for reply of three (3) months. Applicant filed a response on April 29, 2005. However, the response did not include a one month extension of time, and therefore was not timely. Accordingly,

the application became abandoned on April 27, 2005. A Notice of Abandonment was mailed on August 31, 2005.

Applicant has filed the instant petition, arguing that he deposited the response on April 26, 2005. In support thereof, applicant has included a copy of a receipt, showing that some correspondence was mailed to Alexandria, Virginia (Zip Code 22313) on April 26, 2005.

Correspondence is considered filed with the US Patent and Trademark Office on the date it is received. However, if a person mails correspondence via US Postal Service Express Mail, that correspondence will be considered filed with the PTO on the date it is deposited with the US Postal Service, provided the Express Mail mailing label was placed on the paper(s) that constitute the correspondence prior to the original mailing be Express Mail. See 37 CFR 1.10.

Correspondence will also be considered to have been timely filed if it was mailed with a Certificate of Mailing or Transmission. For a Certificate of Mailing to be timely, the correspondence must: (1) be mailed prior to expiration of the set period of time; (2) must be addressed to the US Patent and Trademark Office with sufficient postage as first class mail; and (3) include a certificate for each piece of correspondence, stating the date of deposit via first class mail. See 37 CFR 1.8.

A review of the response filed April 29, 2005 reveals that while it was "dated" April 25, 2005, it was not filed with a Certificate of Mailing or via US Postal Service Express Mail. While petitioner provided a receipt showing that some correspondence was mailed to Alexandria, Virginia on April 26, 2005, the Office must be able to associate the receipt with the April 29, 2005 response. That is why the Office requires the Express Mail mailing label number or Certificate of Mailing be placed directly on the correspondence being filed.

Petitioner is recommended to promptly file a petition to revive under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m) - currently \$750 for a small entity; (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section. A copy of the form for a petition under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

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By FAX: (501)273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed
to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/64 (2 pages)
Privacy Act Statement (1 page)